

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

Iowa Turkey Growers Cooperative d/b/a)
West Liberty Foods,)

West Liberty, Iowa)

Respondent)

Docket Nos. CWA-07-2001-0052
CERCLA-07-2002-0009
EPCRA-07-2002-0009

CONSENT AGREEMENT AND FINAL ORDER

An initial proceeding for the assessment of a civil penalty was initiated on June 29, 2001, pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (hereafter "CWA"), 33 U.S.C. § 1319(g), when the United States Environmental Protection Agency (Complainant or EPA) issued to Iowa Turkey Growers Cooperative, West Liberty, Iowa (Respondent) a Complaint and Notice of Opportunity for Hearing.

On October 25, 2001, the Complaint was amended to include proposed assessments of civil penalties pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045, in addition to the aforementioned CWA section.

The original Complaint charged Respondent with violations of the CWA Sections 301(a) and 307(d), 33 U.S.C. §§ 1311(a) and 1317(d), and the regulations promulgated at 40 C.F.R. § 403.5(a)(1). In addition to the above alleged violations of the CWA, the Amended Complaint charged Respondent with violations of Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302, and EPCRA Section 304, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355.

The original Complaint proposed a civil penalty of One Hundred Thousand Dollars (\$100,000) for alleged violations of the CWA. The Amended Complaint added additional proposed penalties of Forty One Thousand Two Hundred and Fifty Dollars (\$41,250) for alleged violations of CERCLA, and EPCRA, for a total proposed penalty amount of One Hundred Forty One Thousand Two Hundred and Fifty Dollars (\$141,250). On May 23, 2002, a 2nd Amended Complaint was filed, increasing the proposed penalty for Count I (CWA) from One Hundred

Thousand Dollars (\$100,000) to One Hundred Twenty Thousand Dollars (\$120,000), and thus increasing the total proposed penalty for the 2nd Amended Complaint to One Hundred Sixty One Thousand Two Hundred and Fifty Dollars (\$161,250). The parties have entered into negotiations since the issuance of the Complaint; this Consent Agreement and Final Order are the result of such negotiations, and fully and finally resolve all allegations of the 2nd Amended Complaint.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the 2nd Amended Complaint, and neither admits nor denies the factual allegations of the 2nd Amended Complaint.
2. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the 2nd Amended Complaint.
3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.
4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., CERCLA, 42 U.S.C. §§ 9601 et seq., and EPCRA, 42 U.S.C. §§ 11001 et seq., and all regulations promulgated under each.
5. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
6. The undersigned representative of Respondent certifies he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
7. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty of Ninety Seven Thousand Five Hundred Dollars (\$97,500), as provided in paragraph 1 of the Final Order below.
8. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 7 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq., and the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. §§ 11001 et seq., and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Ninety Seven Thousand Five Hundred Dollars (\$97,500), within thirty (30) days of entry of this Order. Payment shall be in two cashier's or certified checks, the first made payable to the "United States Treasury" in the amount of Eighty Five Thousand Dollars (\$85,000) and remitted to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251,

and the second check made payable to "EPA Hazardous Substance Superfund" in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) and remitted to:

EPA - Region 7
Attn: Superfund Accounting
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of each check should be forwarded to each of the following:


Kathy Robinson
Hearing Clerk
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101; and

Michael Gieryic
Office of Regional Counsel
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

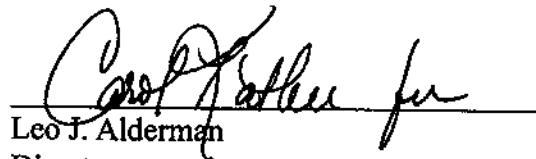
3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

6/13/02
Date



Mike Gieryic
Assistant Regional Counsel

6/13/02
Date


Leo J. Alderman
Director
Water, Wetlands and Pesticides Division


RESPONDENT:
IOWA TURKEY GROWERS COOPERATIVE
WEST LIBERTY, IOWA

6/12/02
Date

Signature 
Printed Name KENNETH D. RUTLEDGE
Title PRESIDENT + CEO

IT IS SO ORDERED. This Final Order shall become effective immediately.

June 13, 2002
Date


Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Iowa Turkey Growers Cooperative d/b/a West Liberty Foods, Respondent
Docket Nos. CWA-07-2001-0052; CERCLA-07-2002-0009; EPCRA-07-2002-0009

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail,
Return Receipt Requested, to:

William J. Koehn
Davis, Brown, Koehn, Shors & Roberts, P.C.
666 Walnut Street
2500 Financial Center
Des Moines, Iowa 50309-3993

and

Copy by facsimile and
First Class Pouch Mail to:

Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

and

Honorable William B. Moran
Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

Dated: 6/14/02


Kathy Robinson
Regional Hearing Clerk